

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

ROGER PERDUE,

Plaintiff,

v.

**OHIO DEPARTMENT OF
REHABILITATION AND CORRECTION,**

Defendant.

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Case No. 2:16-cv-853

JUDGE ALGENON L. MARBLEY

Magistrate Judge Kemp

OPINION & ORDER

Plaintiff Roger Perdue, an Ohio resident who is proceeding without the assistance of counsel, brings this civil rights action under 42 U.S.C. § 1983 against Defendant Ohio Department of Rehabilitation and Correction (“ODRC”). This matter is before the Court for consideration of Magistrate Judge Kemp’s January 18, 2017 Initial Screening **Report and Recommendation** (Doc. 14) recommending that Plaintiff’s claims be DISMISSED on the grounds that the ODRC is immune from suit under the Eleventh Amendment. For the reasons stated herein, upon *de novo* review in accordance with the provisions of 28 U.S.C. § 636(b)(1)(B), this Court **OVERRULES** Plaintiff’s Objections, **ADOPTS** the Magistrate Judge’s Report and Recommendation, and hereby **DISMISSES** Plaintiff’s claims.

I. STANDARD OF REVIEW

If a party objects within the allotted time to a Report and Recommendation, the Court “shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendation to which the objection is made.” 28 U.S.C. § 636(b)(1); *see also*

Fed. R. Civ. P. 72(b). Upon review, the Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge.” 28 U.S.C. § 636(b)(1).

II. ANALYSIS

This Court agrees with the decision and analysis of the Magistrate Judge. The Eleventh Amendment to the United States Constitution immunizes both a state and the state’s agencies from suit by citizens of that state. *See Edelman v. Jordan*, 415 U.S. 651 (1974); *see also Turker v. Ohio Dept. of Rehab. and Corr.*, 157 F.3d 453, 456 (6th Cir. 1998) (“It is well-established that a plaintiff cannot sue a state agency or any of its employees in their official capacities for monetary damages.”). Since the ODRC is a state agency, it is therefore immune from suit. *See Turker*, 157 F.3d at 456–57. For this reason, this Court agrees with the Magistrate Judge that the Eleventh Amendment precludes the Plaintiff from bringing this action and that his claims must be dismissed.

Moreover, Plaintiff’s Objection to the Magistrate Judge’s Report and Recommendation fails to address the Magistrate Judge’s Eleventh Amendment reasoning for recommending dismissal. Plaintiff states that it “was recommended by the magistrate adopting the Defendants claim that the suit should be dismissed because the Plaintiff failed to satisfy the mandatory requirement of R.C. 2969.25(C)(1) when he filed his complaint.” (Doc. 17, Page ID #56). Plaintiff contends that the Magistrate Judge is “attempting to hold a layman to the same requirements of a licensed practicing attorney. . . . [and] enforce a state law that applies to a court of common pleas on a state level.” (Doc. 17, Page ID #58). However, the Magistrate Judge’s recommendation that this Court dismiss Plaintiff’s suit is expressly based on the ODRC’s immunity from suit under the Eleventh Amendment. (*See* Doc. 14, PageID #51 (“The ODRC is a state agency and is therefore immune from liability under the Eleventh

Amendment.”). The Magistrate Judge’s recommendation is neither based nor addresses the Plaintiff’s failure to adhere to the procedural requirements of R.C. 2969.25(C)(1). Therefore, the Plaintiff fails to introduce a viable objection to the Magistrate Judge’s Report and Recommendation.

IV. CONCLUSION

For these reasons, the Court **OVERRULES** Plaintiff’s Objections (Doc. 17) and accordingly **ADOPTS** the Magistrate Judge’s **Report and Recommendation** (Doc. 14). Plaintiff’s Complaint is hereby **DISMISSED**.

IT IS SO ORDERED.

/s/ Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE

DATED: October 30, 2017